

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NJD:NEW:TL-N-3228-99

RABaxer

date: May 26, 1999

to: Chief, Examination Division, New Jersey District E:1501

from: District Counsel, New Jersey District, Newark

subject:

Form 872

Tax Periods: [REDACTED] and Period [REDACTED] - [REDACTED]

This memorandum has been prepared in response to your request for assistance and guidance from our office with respect to the securing of a Form 872 for the above taxpayer. The memorandum is based upon the facts outlined below. If the factual statement is incorrect, please notify this office so that we may determine the effect, if any, on the advice rendered.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUE

What is the appropriate language for a Form 872 and who is authorized to sign the Form 872.

FACTS

The facts as we understand them are as follows:

[REDACTED] EIN [REDACTED] a publicly held company, was acquired by [REDACTED] on [REDACTED]. [REDACTED] filed a short period return for the period [REDACTED] - [REDACTED]. You wish to secure a Form 872 for the [REDACTED] year and short period [REDACTED] - [REDACTED] of [REDACTED].

Subsequent to the acquisition by [REDACTED], there were a number of restructuring mergers and name changes in the [REDACTED] group.

1. On [REDACTED], [REDACTED], a [REDACTED] % owned subsidiary of [REDACTED] merged into its [REDACTED] % owned [REDACTED] EIN [REDACTED], [REDACTED] being the surviving company.

2. On [REDACTED], [REDACTED] merged with [REDACTED] with [REDACTED] being the surviving company. Both [REDACTED] and [REDACTED] were [REDACTED] % subsidiaries of [REDACTED].

3. On [REDACTED], [REDACTED] merged into [REDACTED] with [REDACTED] being the surviving company.

4. During [REDACTED], [REDACTED] changed its name to [REDACTED] and [REDACTED] changed its name to [REDACTED].

LAW

Treas. Reg. § 1.1502-77T sets forth the rules for determining the alternate agent for a consolidated group if the corporation that is the common parent of the group ceases to be the common parent. Under Treas. Reg. § 1.1502-77T(a)(4)(ii) a successor to the common parent in a transaction to which section 381(a) applies would be the alternative agent.

RESPONSE TO YOUR SPECIFIC QUESTION

In this case, given the facts above, [REDACTED] would be the proper party to execute a Form 872 on behalf of [REDACTED] for the tax year [REDACTED] and short period [REDACTED] - [REDACTED].

The language on the Form 872 should read as follows:

[REDACTED], formerly [REDACTED] (EIN [REDACTED]), successor in interest by merger to [REDACTED] (EIN [REDACTED]) as agent for [REDACTED].

If you have any questions or need further information, please contact Robert A. Baxer at (973) 645-2598.

 /s/
PATRICK E. WHELAN
Assistant District Counsel

NOTED:

 /s/
MATTHEW MAGNONE
District Counsel

cc: Frank Attianesi - Examination Group 1501